

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ALISON MILLER,

Plaintiff,

v.

Case No. 08-CV-11426

CAR-O-LINER COMPANY,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO STRIKE

Before the court is Defendant Car-O-Liner Company's motion to strike, filed November 4, 2008. Having reviewed the briefs in the case, the court concludes a hearing on the motion is unnecessary. See E.D. Mich. LR 7.1(e)(2). For the reasons stated below, the court will deny Defendant's motion to strike.

Defendant asks the court to strike Plaintiff Alison Miller's first amended complaint under Federal Rule of Civil Procedure 12(f) because it was untimely filed. (Def.'s Mot. at 2.) During an October 16, 2008 off-the-record telephone conference, this court learned that the parties had agreed to a first amended complaint, and the court directed Plaintiff to file such on or before October 17, 2008. Plaintiff's counsel then incorrectly attempted to attach the first amended complaint to the parties' stipulated order. (Pl.'s Resp. Ex. B.) This was done at defense counsel's suggestion, Plaintiff states. (Pl.'s Resp. Ex. B.) Because an amended complaint cannot be filed until after entry of a stipulation, Plaintiff could not properly file her first amended complaint until after entry of the stipulated order on October 22, 2008. Plaintiff ultimately filed her first amended

complaint on October 28, 2008, four business days after entry of the stipulated order.

It is certainly best, and sometimes jurisdictionally essential, to make filings timely. Considering the background circumstances of this motion, however, and without denigrating the value of timeliness in case preparation, Defendant's present motion unnecessarily elevates form over substance. Defendant cites no authority to indicate why Plaintiff's delay – amounting to a few days – should induce a sanction so severe. Defendant agreed in substance to this filing, both in the telephone conference with the court on October 16, 2008, and in the parties' October 22, 2008 stipulated order. In addition, Defendant's counsel previously reviewed Plaintiff's proposed first amended complaint in early October 2008 (Def.'s Mot. Ex. B.), and cannot complain of any actual unfairness or surprise as a result of these several days of delay. Accordingly,

IT IS ORDERED that Defendant's motion to strike [Dkt. # 17] is DENIED.

s/Robert H. Cleland

ROBERT H. CLELAND

UNITED STATES DISTRICT JUDGE

Dated: December 9, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 9, 2008, by electronic and/or ordinary mail.

s/Lisa G. Wagner

Case Manager and Deputy Clerk

(313) 234-5522